

PART 1-3—PROCUREMENT BY NEGOTIATION

Sec

1-3 000 Scope of part

Subpart 1-3 1—Use of Negotiation

1-3 100 Scope of subpart
1-3 101 General requirements for negotiation
1-3 102 Factors to be considered in negotiated contracts
1-3 103 Dissemination of procurement information

Subpart 1-3 2—Circumstances Permitting Negotiation

1-3 200 Scope of subpart
1-3 201 National emergency
1-3 202 Public exigency
1-3 203 Purchases not in excess of \$2 500
1-3 204 Personal or professional services
1-3 205 Services of educational institutions
1-3 206 Purchases outside the United States
1-3 207 Medicines or medical supplies
1-3 208 Property purchased for authorized resale
1-3 209 Subsistence supplies
1-3 210 Impracticable to secure competition by formal advertising
1-3 211 Experimental developmental or research work
1-3 212 Purchases not to be publicly disclosed
1-3 213 Technical equipment requiring standardization and interchangeability of parts
1-3 214 Negotiation after advertising
1-3 215 Otherwise authorized by law

Subpart 1-3 3—Determinations Findings, and Authorities

1-3 301 Determinations and findings required
1-3 302 Form and requirements of determinations and findings preservation of data

Subpart 1-3 4—Types of Contracts

1-3 400 Scope of subpart
1-3 401 Types of contracts
1-3 402 Selection of contract type
1-3 403 Fixed-price type contracts
1-3 403-1 Firm fixed-price contract
1-3 403-2 Fixed-price contract with escalation
1-3 404 Cost-reimbursement type contracts
1-3 404-1 Cost contract
1-3 404-2 Cost-sharing contract
1-3 404-3 Cost-plus-a-fixed-fee contract
1-3 404-4 Cost-plus-incentive-fee contract
1-3 405 Other types of contracts
1-3 405-1 Time and materials contract

Sec

1-3 405-2 Labor-hour contract
1-3 405-3 Letter contract
1-3 405-4 Basic agreement
1-3 405-5 Indefinite delivery type contracts

Subpart 1-3 5—[Reserved]

Subpart 1-3 6—Small Purchases

1-3 600 Scope of subpart
1-3 601 Purpose
1-3 602 Policy
1-3 603 Competition
1-3 603-1 Solicitation
1-3 603-2 Data to support small purchases
1-3 604 Imprest funds (petty cash) method
1-3 604-1 General
1-3 604-2 Definition of imprest fund
1-3 604-3 Agency responsibilities
1-3 604-4 Use of imprest funds
1-3 604-5 Limitations
1-3 604-6 Procurement and payments
1-3 604-7 Tax exemption certificates
1-3 605 Order-Invoice-Voucher
1-3 605-1 Standard Form 44
1-3 605-2 Standard Forms 147 and 148
1-3 606 Blanket purchase arrangements
1-3 606-1 General
1-3 606-2 Authority to use blanket purchase arrangements
1-3 606-3 Establishment of account
1-3 606-4 Documentation
1-3 606-5 Agency implementation
1-3 607 Interagency use of local term contracts

Subpart 1-3 7—[Reserved]

Subpart 1-3 8—Price Negotiation Policies and Techniques

1-3 800 Scope of subpart
1-3 801 Basic policy
1-3 802 Preparation for negotiation
1-3 803 Type of contract
1-3 804 Conduct of negotiations
1-3 805 Selection of offerors for negotiation and award
1-3 806 Pricing individual contracts
1-3 807 Cost profit and price relationships
1-3 808 Pricing techniques
1-3 808-1 General
1-3 808-2 Price analysis
1-3 808-3 Cost analysis
1-3 808-4 Profit
1-3 808-5 Subcontracting
1-3 808-6 Sole source items
1-3 809 Audit as a pricing aid

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§ 1-3 000 Scope of part

(a) This part prescribes policies and procedures which shall be observed by executive agencies in connection with procurement by negotiation. While references are made in this part to authorizing sections of the Federal Property and Administrative Services Act of 1949 to further the objectives of consistency and uniformity in Government procurement practices such references shall be deemed likewise as references to comparable requirements under applicable laws.

(b) This part sets forth the following policies and procedures:

(1) The basic requirements for the procurement of property and services by means of negotiation.

(2) The different circumstances under which negotiation is permitted.

(3) Determinations and findings that may be required before a contract is entered into by negotiation.

(4) Types of negotiated contracts and their use.

(5) Price negotiation policies and techniques.

(6) Negotiation of surplus labor area set-asides.

(7) Negotiation of small business set-asides, and

(8) Reporting of possible anti-trust violations.

Subpart 1-3 1—Use of Negotiation**§ 1-3 100 Scope of subpart**

This subpart deals with the nature and use of negotiation as distinguished from formal advertising and with limitations upon that use.

§ 1-3 101 General requirements for negotiation

No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(a) The contemplated procurement comes within one of the circumstances permitting negotiation.

(b) Any necessary determinations and findings have been made.

(c) Such clearance or approval as is prescribed by applicable agency procedures has been obtained, and

(d) The prospective contractor has been determined to be responsible.

§ 1-3 102 Factors to be considered in negotiated contracts

Whenever property or services are to be procured by negotiation offers shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required property or services in accordance with the basic policies set forth in this Part 1-3 to the end that the procurement will be made to the best advantage of the Government price and other factors considered. Such offers shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the contracting officer. Negotiation shall thereupon be conducted with due attention being given to the following and any other appropriate factors:

(a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to production costs including extra pay shift multi-shift and overtime costs and any other factor relating to the price such as profits cost of transportation and cash discounts.

(b) Comparison of the business's reputation, capacity and responsibility of the respective persons or firms who submit offers.

(c) Consideration of the quality of the property or services offered including the same or similar property or services previously furnished with due regard to conformance with specification requirements.

(d) Consideration of delivery requirements.

(e) Discriminating use of price and cost analyses.

(f) Investigation of price aspects of any important subcontract.

(g) Individual bargaining by mail or by conference.

(h) Consideration of cost sharing.

(i) Effective utilization in general of the most desirable type of contract.

(j) Consideration of the size of the business concern.

(k) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities.

(l) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area.

(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor

(n) Consideration of the extent of subcontracting

(o) Consideration of the existing and potential workload of the prospective supplier

(p) Consideration of broadening the industrial base by the development of additional suppliers

(q) Consideration of whether the contractor requires Government furnished property machine tools or facilities

§ 1-3 103 Dissemination of procurement information

(a) Synopses of proposed procurements and contract awards shall be prepared and publicized in the Department of Commerce Synopsis of U S Government Proposed Procurement Sales, and Contract Awards' in accordance with the requirements of sections 1-1 1003 and 1-1 1004

(b) Promptly after making awards in any procurement in excess of \$10 000 the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted Upon request unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted but in no event will an offeror's cost breakdown profit overhead rates, trade secrets or other confidential business information be disclosed to any other offeror

(c) Classified information shall be furnished only in accordance with agency regulations governing the handling of classified information

[24 FR 1949 Mar 17 1959 as amended at 25 FR 5224 June 11 1960]

Subpart 1-3 2--Circumstances Permitting Negotiation

§ 1-3 200 Scope of subpart

Subject to the limitations prescribed in this Subpart 1-3 2 or as otherwise provided by law procurement may be effected by negotiation under any one of the exceptions contained in sections 302(c) (1) through 302(c) (15) of the Act

§ 1-3 201 National emergency

Pursuant to the authority of section 302(c) (1) of the Act purchases and contracts may be negotiated if 'determined to be necessary in the public interest during a period of national emergency declared by the President or by the Congress'

(a) *Duration* Under present circumstances authority of this section shall extend for the duration of the national emergency declared pursuant to Presidential Proclamation 2914 dated December 16 1950

(b) *Application* The authority of this section shall be used only to the extent of furthering the policy (enunciated in Defense Manpower Policy No 4 (revised November 5 1953 and amended July 27 1955) and in Bureau of the Budget Bulletin No 58-5 dated March 25 1958) which encourages the placing of contracts and facilities in areas of substantial labor surplus and upon the determination of the head of the agency concerned that to do so is necessary in the public interest Contracts entered into pursuant to this authority shall be negotiated in accordance with agency procedures

§ 1-3 202 Public exigency

Pursuant to the authority of section 302(c) (2) of the Act purchases and contracts may be negotiated without formal advertising if 'the public exigency will not admit of the delay incident to advertising'

(a) *Application* In order for this authority to be used the need must be compelling and of unusual urgency as when the Government would be seriously injured financially or otherwise if the property or services to be purchased or contracted for were not furnished by a certain time and when they could not be procured by that time by means of formal advertising This applies irrespective of whether that urgency could or should have been foreseen For example this authority may be used when property or services are needed at once because of a fire flood explosion or other disaster

(b) *Limitations* Every contract negotiated under this authority shall be accompanied by a signed statement of the contracting officer justifying its use When purchase action under this authority is based on telephone or other

oral offers a written confirmation of the accepted offer shall be secured and made a part of the purchase case file. A record shall be established also in such cases containing the following information as a minimum: name and address of each offeror; quoting item description; unit price; delivery time; and discount terms. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the purchase file. Negotiation under this authority is subject to the preparation of appropriate determinations and findings prescribed in Subpart 1-3 3.

§ 1-3 203 Purchases not in excess of \$2,500

Pursuant to the authority of section 302(c) (3) of the Act, purchases and contracts may be negotiated without formal advertising if 'the aggregate amount involved does not exceed \$2 500'.

(a) *Application* Contracts or purchases aggregating \$2 500 or less shall be made under the authority of this section 1-3 203 rather than under any of the other authorities for negotiation. In arriving at the 'aggregate amount involved' there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than \$2 500 shall not be broken down into several purchases or contracts of less than \$2 500.

(b) *Procedure* Purchases and contracts aggregating not more than \$2 500 shall be made in accordance with Subpart 1-3 6.

§ 1-3 204 Personal or professional services

Pursuant to the authority of section 302(c) (4) of the Act, purchases and contracts may be negotiated without formal advertising if 'for personal or professional services'.

(a) *Application* This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services they are required to be performed by an individual contractor in person (not by a concern); if professional services they may be performed either by an individual contractor in person or a concern.

(2) The services are of a professional nature or are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of applicable law.

(b) *Limitations*

(1) The authority of this section 1-3 204 and the conditions imposed upon its use shall not apply to the procurement by negotiation of any types of services authorized under any other provisions of this subpart.

(2) Use of authority of this section 1-3 204 for professional engineering, architectural and landscape architectural services for any public building or public improvement (exclusive of bridges, roads, sidewalks, sewers, mains or similar items) the construction cost of which is estimated to be \$200 000 or more shall be subject to prior clearance with the General Services Administration.

§ 1-3 205 Services of educational institutions

Pursuant to the authority of section 302(c) (5) of the Act, purchases and contracts may be negotiated without formal advertising if 'for any service to be rendered by any university, college or other educational institution'.

(a) *Application* The following are illustrative of circumstances with respect to which this authority may be used:

(1) Educational or vocational training services to be rendered by any university, college or other educational institution in connection with the training and education of personnel and for necessary material services and supplies furnished by any such institution in connection therewith.

(2) Experimental, developmental or research work (including services, tests and reports necessary or incidental thereto) to be conducted by any university, college or other educational institution and reports furnished in connection therewith.

(3) Analyses, studies or reports (statistical or otherwise) to be conducted or prepared by any university, college or other educational institution.

§ 1-3 206 Purchases outside the United States

Pursuant to the authority of section

302(c) (6) of the Act purchases and contracts may be negotiated without formal advertising if the supplies or services are to be procured and used outside the limits of the United States and its possessions' This authority shall be used only for the procurement of property or services which are actually purchased from sources outside and used outside the limits of the United States its Territories and possessions such as property or services (including construction) for overseas installations or for the use of overseas personnel

§ 1-3 207 Medicines or medical supplies

Pursuant to the authority of section 302(c) (7) of the Act purchases and contracts may be negotiated without formal advertising if 'for medicines or medical supplies

(a) *Application* This authority shall be used only for such supplies as are peculiar to the field of medicine including technical equipment such as surgical instruments surgical and orthopedic appliances X-ray supplies and equipment and the like

(b) *Limitations* Whenever the probable cost of property to be purchased by negotiation under this authority will exceed \$10 000, suitable advance publicity of the proposed purchase shall be given for a period of at least 15 days wherever practicable The requirement of "suitable advance publicity" shall be deemed to be complied with if circulation of notice of intent to negotiate is made to business concerns engaged in the manufacture and/or sale of the products involved including qualified concerns known to have current interest in selling such products to the Government Where desirable publication of the intention to negotiate through newspapers or other similar media may be used to supplement circularization

§ 1-3 208 Property purchased for authorized resale

Pursuant to the authority of section 302(c) (8) of the Act purchases and contracts may be negotiated without formal advertising if for property purchased for authorized resale"

(a) *Application* This authority shall be used only for purchases for resale through commissaries or other similar facilities and ordinarily only for purchases of articles with brand names or

of a proprietary nature as required by patrons of the selling activities

(b) *Limitations* Whenever the probable cost of property to be purchased by negotiation under this authority will exceed \$10 000 suitable advance publicity of the proposed purchase shall be given for a period of at least 15 days wherever practicable This shall be accomplished in the manner set forth in section 1-3 207(b) When exercising this authority regardless of the probable cost competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition consistent with the type and character of the procurement

§ 1-3 209 Subsistence supplies

Pursuant to the authority of section 302(c) (9) of the Act purchases and contracts may be negotiated without formal advertising if for perishable or non-perishable subsistence supplies'

(a) *Application* The authority of this paragraph may be used for the purchase of any and all kinds of subsistence supplies

(b) *Limitation* When exercising this authority competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition consistent with the type and character of the procurement

§ 1-3 210 Impracticable to secure competition by formal advertising

Pursuant to the authority of section 302(c) (10) of the Act purchases and contracts may be negotiated without formal advertising if for supplies or services for which it is impracticable to secure competition

(a) *Application* The following are illustrative of circumstances with respect to which this authority may be used

(1) When property or services can be obtained from only one person or firm (sole source of supply)

(2) When competition is precluded because of the existence of patent rights copyrights secret processes control of basic raw material or similar circumstances

(3) When bids have been solicited pursuant to the requirements of formal

advertising and no responsive bid has been received from a responsible bidder

(4) When bids have been solicited pursuant to the requirements of formal advertising and the responsive bid or bids do not cover the quantitative requirements of the invitation for bids in which case negotiation is permitted for the remaining requirements of the invitation for bids

(5) When the contemplated purchase is for training film motion picture productions or manuscripts

(6) When the contemplated contract is for technical nonpersonal services in connection with the assembly installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature

(7) When the contemplated contract involves maintenance repair alteration or inspection and the exact nature or amount of the work to be done is not known

(8) When the contemplated contract is for studies or surveys other than those which may be negotiated under sections 302(c) (5) or (11) of the Act

(9) When the contemplated contract is for stevedoring terminal, warehousing or switching services and when either the rates are established by law or regulation or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal invitation for bids

(10) When the contemplated contract is for commercial ocean or air transportation, including time charters space charters and voyage charters over trade routes not covered by common carriers (negotiation for transportation services when the services can be procured from common carriers is authorized by section 321 of the Transportation Act of 1940 (49 USC 65)—see section 1-3 215) and including services for the operation of Government-owned vessels or aircraft

(11) When it is impossible to draft for an invitation for bids adequate specifications or any other adequately detailed description of the required property or services

(12) When the contemplated contract is for services related to the procurement of perishable subsistence such as protective storage icing processing, packaging handling and transportation,

and it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence

(b) *Limitations* Each contract negotiated under this authority shall be accompanied by a signed statement of the contracting officer justifying its use

§ 1-3 211 Experimental, developmental, or research work

Pursuant to the authority of section 302(c) (11) of the Act purchases and contracts may be negotiated without formal advertising if the agency head determines that the purchase or contract is for experimental developmental or research work or for the manufacture or furnishing of property for experimentation development research or test

(a) *Application* The following are illustrative of circumstances with respect to which this authority may be used

(1) When the contemplated contract relates to theoretical analysis exploratory studies and experimentation in any field of science or technology

(2) When the contemplated contract is for developmental work and calls for the practical application of investigative findings and theories of a scientific or technical nature

(3) When the contemplated contract is for such quantities and kinds of equipment supplies parts accessories or patent rights thereto and drawings or designs thereof as are necessary for experimentation development research or test

(4) When the contemplated contract is for services tests and reports necessary or incidental to experimental developmental or research work

(b) *Limitations* This authority shall not be used for contracts for quantity production except that such quantities may be purchased as are necessary to permit complete and adequate experimentation development research, or test Research or development contracts which call for the production of a reasonable number of experimental or test models or prototypes shall not be regarded as contracts for quantity production Negotiation under this authority is also subject to the preparation of appropriate determinations and findings prescribed by Subpart 1-3 3

§ 1-3 212 Purchases not to be publicly disclosed

Pursuant to the authority of section 302(c)(12) of the Act purchases and contracts may be negotiated without formal advertising if for property or services as to which the agency head determines that the character ingredients or components thereof are such that the purchase or contract should not be publicly disclosed.

(a) *Application* This authority shall be used only when required by considerations of national security.

(b) *Limitations* Negotiation under this authority is subject to the preparation of appropriate determinations and findings prescribed by Subpart 1-3 3.

§ 1-3 213 Technical equipment requiring standardization and interchangeability of parts

(a) *Application*

(1) Pursuant to the authority of section 302(c)(13) of the Act purchases and contracts may be negotiated without formal advertising if for equipment which the agency head determines to be technical equipment and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest.

(2) This section 1-3 213 provides authority only to employ negotiation as distinguished from advertising and does not constitute authority to make purchases of equipment. The latter must be elsewhere derived.

(b) *Application*

(1) This authority may be used for purchasing additional units and replacement items of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where in special situations or in particular localities such standardization and interchangeability is determined necessary in the public interest. Examples of situations where this authority may be used are

(i) Where in special situations or in particular localities it has been found necessary to limit the variety and quan-

tity of parts that must be carried in stock

(ii) Where standardization of technical equipment is necessary in special situations or in particular localities so that parts may be available and interchanged among items of damaged or worn equipment

(iii) Where in special situations or particular localities technical equipment is available from a number of suppliers which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts

(2) Consideration shall be given to the following and other pertinent factors before making a determination to procure specified makes and models under the authority of this section 1-3 213

(i) The practicability of interchanging parts and cannibalizing equipment

(ii) The probability that future procurement of the selected item of equipment can be effected at reasonable prices

(iii) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock

(iv) The value of similar equipment and its supporting parts on hand

(v) Possible savings in training personnel

(vi) Whether the standardization will adversely affect existing specifications and standards

(vii) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model already in the supply system

(3) Standardization approval under this authority shall be for a stated period of time which bears a reasonable relationship to the life of the equipment

(c) *Justification*

(1) In arriving at a determination that standardization of equipment and interchangeability of its parts are necessary in the public interest such standardization must be in fact fully justified as genuinely necessary in the public interest. It is not sufficient that it merely be generally desirable. Nor is an

arbitrary or perfunctory conclusion sufficient. Facts must clearly show the compelling reasons why it is necessary, as for example

(1) Substantial savings possible through standardization (estimated annual savings to be indicated when possible)

(11) Minimizing potential breakdown of a specifically identified service or function which might endanger life property or the orderly conduct of vital Government functions

(2) The term 'in special situations' precludes application of the authority to generally prevailing or generalized conditions. The law assumes that it will be necessary to employ the authority only under unusual or abnormal conditions

(3) The term "particular localities" has reference to remote locations which are not only remote in the sense of physical distance from large metropolitan areas but remote from available stocks of replacement parts and possibly related service facilities. For example it is not enough to conclude that standardization is required of a motor vehicle in Alaska because of remote location if in fact replacement parts of various vehicle makes are readily available. It must be shown expressly and not by inference (1) that the location involved is inaccessible because of stated conditions such as the absence of a connected road system or (11) that there are not available within stated reasonable distances adequate stocks of replacement parts or personnel and facilities necessary to perform required services and that there are circumstances which make it impractical to maintain at the location such stocks and furnish such service for more than a particular number of makes of vehicles. Most using activities within the United States (excluding Alaska) could not be considered to meet these requirements. However there may be cases where because of extremely unusual conditions standardization at a particular location within the United States may be necessary in the public interest

(d) Limitations

(1) This authority shall not be used for initial procurement of equipment and spare parts which ultimately will be standardized or for the purpose of selecting arbitrarily the equipment of cer-

tain suppliers nor shall it be used unless and until the agency head has determined that

(i) The equipment constitutes technical equipment

(11) Standardization of such equipment and interchangeability of its parts are necessary in the public interest and

(111) Negotiation is necessary in special situations or in particular localities in order to assure required standardization of equipment and interchangeability of parts

(e) Determination and findings

(1) Negotiation under this authority is subject to the requirement for preparation of appropriate determinations and findings as provided by Subpart 1-3 3

(2) The following example of findings and determinations is illustrative of the type and amount of information which may be considered sufficient to justify negotiation under section 302 (c) (13) of the Act

DEPARTMENT OF THE INTERIOR

FINDINGS AND DETERMINATIONS UNDER SECTION 302(C) (13) OF THE FEDERAL PROPERTY PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

Findings

In accordance with the requirements of section 302(c) (13) and 307 of the Federal Property and Administrative Services Act of 1949 I make the following findings

1 The Alaska Road Commission has stated that it has a requirement for 25 -----

(Make and ----- trucks as set forth in (letter) or (req-type)

quisition) dated ----- and has submitted by letter dated ----- signed by ----- information in justification for such purchase under section 302(c) (13) as described or included in the findings set forth below

(Name and title) -----

2 The trucks in question are required for use at ----- Alaska This location is accessible only by -----

(District or area) ----- (Indicate ie boat ----- and for several months or boat and air etc)

each year is accessible only by ----- The Government's operations which consist of ----- require the use of -----

(General description only) ----- of trucks of this type The location presently has ----- of these trucks with stocks of spare parts determined necessary from experience to maintain these trucks in proper

operational efficiency There are also ----- trucks of other manufacture with required stocks of spare parts which will gradually be eliminated by standardization No commercial supply or service centers are maintained at this remote location or within approximately ----- miles thereof

3 It is impractical to provide service and repair facilities for numerous makes of vehicles and to maintain stocks of parts necessary to keep the various makes in operating condition Each make of vehicle usually requires additional special equipment for proper servicing and repair This results in added cost housing and related administrative expense Similarly each additional make requires the maintenance of separate stocks of spare service and repair parts which require additional bins storage and clerical and administrative expenses The annual savings in cost estimated to result from the maintenance of reduced stocks of parts made possible by standardizing on these trucks is -----

4 (State other factors and details as applicable)

5 Under these circumstances the Alaska Road Commission regards the standardization and interchangeability as necessary in the public interest

Determinations

1 Based upon the foregoing findings I hereby determine within the meaning of section 302(c)(13) of the Federal Property and Administrative Services Act of 1949 that

A The equipment described is technical equipment

B Negotiation is necessary in the situation and in the locality described in order to assure standardization of the equipment and interchangeability of parts and

C Such standardization and interchangeability is necessary in the public interest

2 Upon the basis of these findings and determinations I hereby authorize the negotiation of a contract (or contracts) for procurement of the equipment described in these findings pursuant to section 302 (c)(13) of the Federal Property and Administrative Services Act of 1949

Secretary of the Interior

§ 1-3 214 Negotiation after advertising

Pursuant to the authority of section 302(c)(14) of the Act purchases and contracts may be negotiated without formal advertising if for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or some part of the requirements) or have not been independently arrived at in open competition "

(a) *Application* This authority is designed to cope with cases where bids received after advertising are too high, although not actually identical or apparently collusive and cases of apparent collusive bidding Indications of possible violation of antitrust laws or collusive bidding are to be reported in accordance with procedures prescribed in Subpart 1-19 of this chapter Where after advertising some of the bids do not appear reasonable and the reasonable bids do not cover the full quantity required the contracting officer may at his discretion accept the reasonable bids Rejection of the bids not accepted and negotiation for the balance of the quantity required must be preceded by the determination required by this section 1-3 214 Negotiation for the balance is subject also to the requirements of section 1-3 214(b)

(b) *Limitations* After appropriate determination, and after rejection of bids no contract shall be negotiated under this authority unless

(1) Notification of intention to negotiate and reasonable opportunity to negotiate have been given to each responsible bidder which submitted a bid in response to the invitation for bids and

(2) The negotiated price is the lowest negotiated price offered by any responsible supplier

§ 1-3 215 Otherwise authorized by law

Pursuant to the authority under section 302(c)(15) of the Act purchases and contracts may be negotiated without formal advertising if "otherwise authorized by law " This provision preserves the authority to negotiate contracts conferred by other legislation The following are typical examples

(a) Mutual Security Act of 1956 (22 USC 1750)

(b) Small Business Act (Public Law 85-536)

(c) Section 321 of the Transportation Act of 1940 (49 USC 65) (This law permits negotiation for transportation services when the services required can be procured from any common carrier This authority shall not be used to eliminate competition from companies which are not common carriers when the services may also be performed by such companies)

When negotiating pursuant to other statutory authority the purchase or contract

instrument should cite the applicable law authorizing negotiation

Subpart 1-3 3—Determinations, Findings, and Authorities

§ 1-3 301 Determinations and findings required

In addition to the required determinations and findings set forth in Subpart 1-3 2 the following determinations in connection with entering into contracts by negotiation are required to be made in writing supported by written findings as specified in section 1-3 302

(a) The determination required by section 304(b) of the Act as to estimated cost of and fees to be paid under cost-plus-a-fixed fee contracts

(b) The determination required by section 304(b) of the Act that use of a cost or a cost-plus-a-fixed fee or incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind or quality required without use of such a contract and

(c) The determination required by section 303(b) of the Act that it is in the public interest to reject all bids

§ 1-3 302 Form and requirements of determinations and findings, preservation of data

(a) Each determination or decision required under section 1-3 211 through section 1-3 214 and section 1-3 301 shall be based on written findings made by the official making such determination or decision which findings shall be final and available for a period of at least six years following the date of the determination or decision. A copy of such findings shall be filed with the General Accounting Office copy of the contract

(b) The form of determination and findings required shall be sufficient to satisfy the requirements of the applicable provisions of law and shall be in such form as may be prescribed in agency instructions

(c) The use of negotiation under sections 1-3 202 and 1-3 210 shall be accompanied by a signed statement of the contracting officer justifying the use of negotiation a copy of which must be filed with the General Accounting Office copy of the contract

(d) In any case where a purchase or contract is negotiated under section

1-3 201 and sections 1-3 207 through 1-3 214 data with respect to negotiation shall be preserved in the files for a period of six years following final payment on such purchase or contract. Such data shall be sufficient to show

(1) The reason and basis for use of negotiation

(2) The extent of competition secured and

(3) Other essential information bearing on the actual negotiations

(e) Where in other cases of negotiation the requirements of paragraph (a)

(c) and (d) of this section 1-3 302 are not applicable final data shall nevertheless be made a part of the file to support the action taken. This includes the informal records required with respect to purchases resulting from oral offers

Subpart 1-3 4—Types of Contracts

§ 1-3 400 Scope of subpart

This subpart (a) describes and defines types of contracts for procurement by negotiation (b) defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract and (c) imposes conditions on the use of certain of the available types of contracts

§ 1-3 401 Types of contracts

Contracts negotiated under this Part 1-3 may be of any of the types or combination of types described in this Subpart 1-3 4 which will promote the best interests of the Government subject to the following restrictions. The cost-plus-a-percentage-of-cost system of contracting shall not be used. In furtherance of this policy all prime contracts and letter contracts on other than a firm fixed-price basis shall by an appropriate clause prohibit cost-plus-a-percentage-of-cost subcontracts. In addition all cost-plus-fee subcontracts under prime contracts which are on other than a firm fixed-price basis shall limit the payment of fees to those prescribed by agency procedures within the limitations of section 304 of the Act

§ 1-3 402 Selection of contract type

(a) The firm fixed-price contract shall be used unless under the applications and limitations contained in this Subpart 1-3 4 the use of another type of

contract is more appropriate. However the selection of an appropriate type of contract is of primary importance in obtaining fair and reasonable prices under all of the circumstances. The type of contract therefore has a direct effect upon the resulting price or cost to the Government. Type of contract and pricing are inter-related and should be so considered together in negotiation, in accordance with the provisions of section 1-3 803.

(b) In determining the type of contract to be utilized consideration should be given to such factors as

(1) Type and complexity of the item

(2) Urgency of the requirement

(3) The period of contract performance and the length of production run

(4) Degree of competition present

(5) Difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience or the instability of design

(6) Availability of comparative price data or lack of firm market prices or wage levels

(7) Prior experience with the contractor

(8) Extent and nature of subcontracting contemplated

(9) Assumption of business risk

(10) Technical capability and financial responsibility of the contractor

(11) Administrative costs of both parties

(c) Early agreement should be reached between the Government and the contractor on the type of contract best suited to the procurement. Except in the case of a firm fixed-price contract contract files shall include documentation to show the reasons why the particular contract type was utilized.

§ 1-3 403 Fixed price type contracts

The fixed-price type contract generally provides for a firm price or under the appropriate circumstances may provide for an adjustable price for the supplies or services which are being procured. Fixed-price contracts are of types so designed as to facilitate proper pricing under varying circumstances.

§ 1-3 403-1 Firm fixed price contract

(a) *Description* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract when appropriately applied as set forth in this section 1-3 403-1 places the maximum risk and responsibility upon the contractor and affords him the greatest incentive for efficient performance with the resultant benefit in earnings. Utilization of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Applicability* The firm fixed-price contract is suitable for use in procurements when stable and reasonably definite specifications are available and when fair and reasonable pricing can be achieved such as where (1) adequate competition has made initial quotations effective (2) prior purchases of the same or similar supplies or services provide reasonable price comparison (3) experienced cost information or sound estimates of the probable cost of performance are available in the negotiation of contract prices, or (4) any other reliable basis for proper pricing can be utilized consistent with the purpose of this type of contract. The firm fixed-price contract is particularly suitable in the purchase of standard commercial items, modified commercial items or other items for which adequate information on production and cost is available.

(c) *Limitation* The firm fixed-price contract shall not be used when contingencies proposed in the contract price are considered unreasonable.

§ 1-3 403-2 Fixed price contract with escalation

(a) *Description* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. These contingencies should be limited to those beyond the normal control of the contractor. The business risk of the contractor in a fixed-price contract is reduced by the inclusion of escalation provisions in which the Government

agrees to revise the stated price upon the happening of the prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types:

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs or both.

(b) *Applicability* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration.

(1) Price escalation may be used under the conditions stated above when the items to which escalation will be applied are standard materials or articles normally sold at "established" or "published" prices in a competitive commercial market or are modifications thereof the prices of which can be reasonably related to the prices of such standard materials or articles.

(2) Labor and material escalation generally is suitable for use when the types and kinds of labor and material that the contractor intends to use in the performance of a contract that covers an extended period of time prevents him from accepting the full risk of possible cost increases and the Government is unwilling to accept the proposed contingency factors.

(c) *Limitation* Escalation shall not be used to provide protection against contingencies arising from the lack of accurate estimates of the quantities of labor or material required for performance of the contract.

§ 1-3 404 Cost reimbursement type contracts

(a) *Description* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds and a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Applicability* The cost-reimbursement type contract is suitable for use when the nature and complexity of the procurement is such that costs of performance cannot be estimated with reasonable accuracy. In addition, it is essential that the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used.

(c) *Limitations* The cost-reimbursement type contract may be used only after a determination that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure property or services of the kind or quality required without the use of such type of contract.

§ 1-3 404-1 Cost contract

(a) *Description* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Applicability* The following are illustrative situations in which the use of this type of contract may be appropriate:

(1) Research and development work particularly with nonprofit educational institutions or other non-profit organizations.

(2) Facilities contracts

(3) Initial small quantity procurements of new items with anticipated subsequent large production runs

§ 1-3 404-2 Cost sharing contract

(a) *Description* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs

(b) *Applicability* A cost-sharing contract is suitable for those procurements which cover production or research projects which are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this benefit, the contractor agrees to absorb a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable

(1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations

(2) Other research and development work where the results of the contract may have commercial benefit to the contractor

§ 1-3 404-3 Cost plus a fixed-fee contract

(a) *Description* The cost-plus-a-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract

(b) *Applicability* The cost-plus-a-fixed-fee contract is suitable for use when a cost-reimbursement type of contract is appropriate as provided in section 1-3 404(b), and when the parties agree that the procurement should be profit bearing in the form of a fixed fee. The following are illustrative situations in which this type of contract may be appropriate

(1) Research and development work where the scope and nature thereof cannot be definitely specified

(2) Definite specifications exist but the contractor lacks a valid basis for es-

timating costs because the property called for is not an item regularly manufactured or the services called for have not been previously performed or partial experience will not reveal a proper pricing level for the remainder of the production

(3) Production or construction contracts where the specifications are not complete or where major changes substantially affecting the scope of the work are expected

(4) Work to be performed in a Government-owned plant with the use of Government-owned facilities

(c) *Limitations* The fixed fees shall not exceed those prescribed by agency procedures within the limitations of section 304 of the Act

(d) *Contractors' investment in work-in-process* It is the policy of the executive branch of the Government that contractors having cost-reimbursement type contracts should maintain a reasonable investment in the property and facilities acquired and in the services rendered in the performance of such contracts. This investment provides a strong incentive for the contractor to strive for greater efficiency and economy and better management with resultant lower costs to the Government

(1) In keeping with this policy cost-reimbursement type contracts other than those set forth below shall provide for interim payment of not to exceed 80 percent of the costs incurred by the contractor in the performance of the contract

(i) Contracts under which the contractors receive no fee or profit

(ii) Contracts with educational institutions or nonprofit organizations

(iii) Contracts solely for the operation of Government-owned plants or vessels

(iv) Contracts with small business concerns

(v) Contracts for research and development which do not provide for quantity production

(vi) Contracts for performance outside the United States, its Territory, its possessions and Puerto Rico

(vii) Contracts having an estimated cost not in excess of \$250 000

(viii) Contracts for construction and architect-engineer services

(ix) As determined by the agency head concerned, contracts in which the applications of the policy would impose undue hardship on the contractor or adversely affect the interests of the Government

(2) An appropriate clause implementing this policy shall be inserted in all cost-reimbursement type supply contracts

(3) Application of this policy need not affect the method of payment of the fee but the extent of the contractor's capital investment in the performance of the contract will be taken into consideration in fixing the amount of fee or profit

§ 1-3 404-4 Cost plus incentive fee contract

(a) *Description* The cost-plus-incentive-fee contract is a cost-reimbursement-type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides within limits, for increases in fee above target fee when total allowable costs are less than target costs and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed as an incentive to the contractor to increase the efficiency of performance.

(b) *Applicability* The cost-plus-incentive-fee contract is suitable for use where a cost-reimbursement-type of contract is found necessary and where there is a probability that its use will result in lower costs to the Government than other forms of cost-reimbursement-type contracts through cost reduction incentive to the contractor.

(c) *Limitation* The target and the maximum fee shall be subject to the administrative limitations stated in section 1-3 404-3(c).

(d) *Contractors' investment in work-in-process* See section 1-3 404-3(d).

§ 1-3 405 Other types of contracts

§ 1-3 405-1 Time and materials contract

(a) *Description* The time and materials type of contract provides for the procurement of property or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost. Material handling costs may be included in the charge for material at cost "to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract may establish either a price ceiling or a ceiling amount which the contractor may not exceed (except at his own risk).

(b) *Applicability* The time and materials contract is used only in those situations where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any substantial accuracy. Particular care should be exercised in the use of this type of contract since its nature does not encourage efficiency. Thus it is essential that this type of contract be used only where provision is made for adequate controls including appropriate surveillance by Government personnel during performance to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of property, (2) the engineering design and manufacturer of dies, jigs, fixtures, gauges and special machine tools, (3) repair, maintenance or overhaul work, and (4) work to be performed in emergency situations.

(c) *Limitation* This type of contract may be used only after determination that no other type of contract will suitably serve.

§ 1-3 405-2 Labor hour contract

(a) *Description* The labor-hour type of contract is a variant of the time and material type contract differing only in that materials are not involved in the contract or are not supplied by the contractor.

(b) *Applicability* The labor-hour type of contract is applicable in those procurements described for the time and materials type contract but in situations in which contractor-furnished materials are not involved.

(c) *Limitations* This type of contract may be used only after determination that no other type of contract will suitably serve

§ 1-3 405-3 Letter contract

(a) *Description* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of property or performance of services including but not limited to preproduction planning and the procurement of necessary materials

(b) *Applicability* A letter contract may be entered into when (1) the interests of the Government demand that the contractor be given a binding commitment so that work can be commenced immediately and (2) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible as for example when the nature of the work involved prevents the preparation of definitive requirements specifications or cost data

(c) *Limitations*

(1) A letter contract shall be used only after a determination in accordance with agency procedures that no other type of contract is suitable

(2) A letter contract shall not be entered into without competition when competition is practicable

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date Executive agencies shall prescribe the limit of effectiveness of letter contracts

(4) The maximum liability of the Government stated in the letter contract generally shall not exceed 50% of the total estimated cost of the procurement but this liability may be increased in accordance with agency procedures

(d) *Content* Letter contracts shall be specifically negotiated and shall as a minimum requirement include agreement as to the following

(1) That the contractor will proceed immediately with performance of the contract including procurement of necessary materials

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default

(3) That the contractor is not authorized to expend moneys or incur obligations in excess of the maximum liability of the Government as stated in the letter contract

(4) The type of definitive contract

(5) As many definitive contract provisions as possible

(6) That the contractor shall provide such price and cost information as may reasonably be required by the contracting officer and

(7) That the contractor and the Government shall promptly enter into negotiations in good faith to reach agreement upon and execute a definitive contract

§ 1-3 405-4 Basic agreement

(a) *Description* A basic agreement is a written instrument of understanding executed between a procuring agency and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work price delivery and additional matters peculiar to the requirement of the specific procurement involved and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable

(b) *Applicability*

(1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement and (ii) substantial recurring negotiating problems exist with a particular contractor

(2) Amendment or supersession A basic agreement shall be amended only by an amendment of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement As a minimum basic agreements will be reviewed annually on the anniversary of their effective date and re-

vised at that time to conform with the current requirements of this chapter. Amendments shall not have retroactive effect.

(3) **Discontinuance of basic agreement.** Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(c) *Limitations*

(1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved. Basic agreements shall not be used in any manner to restrict competition.

(3) Basic agreements shall be utilized only in connection with negotiated contracts.

§ 1-3 405-5 Indefinite delivery type contracts

One of the following indefinite delivery type contracts may be used for procurements where the exact time of delivery is not known at time of contracting.

(a) *Definite quantity contracts*

(1) **Description.** This type of contract provides for a definite quantity of specified property or for the performance of specified services for a fixed period with deliveries or performance at designated locations upon order. Depending on the situation the contract may provide for (i) firm fixed-prices or (ii) price escalation.

(2) **Applicability.** This type of contract is particularly suitable for use where it is known in advance that a definite quantity of property or services will be required during a specific period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

(b) *Requirements contract*

(1) **Description.** This type of contract provides for filling all actual purchase requirements of specific property or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation the contract may provide for (i) firm fixed-prices or (ii) price escalation. An estimated total quantity is stated for the information of prospective contractors which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore the contract shall state where feasible the maximum limit of the contractor's obligation to deliver and in such event shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly when small orders are anticipated the contract may specify the minimum quantities to be ordered.

(2) **Applicability.** A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are

(i) Flexibility with respect to both quantities and delivery scheduling.

(ii) Supplies or services need be ordered only after actual needs have materialized.

(iii) Where production lead time is involved deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment.

(iv) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement and

(v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user

Generally the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated

(c) *Indefinite quantity contract*

(1) *Description* This type of contract provides for the furnishing of an indefinite quantity within stated limits of specific property or services during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation the contract may provide for (i) firm fixed-prices or (ii) price escalation. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the property or services and that the contractor shall furnish such stated minimum and if and as ordered any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption or by other means. When large individual orders or orders from more than one activity are

anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated the contract may specify the minimum quantities to be ordered.

(2) *Applicability* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are

(i) Flexibility with respect to both quantities and delivery scheduling

(ii) Property or services need be ordered only after actual needs have materialized

(iii) The obligation of the Government is limited and

(iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated

Subpart 1-3 5—[Reserved]**Subpart 1-3 6—Small Purchases****§ 1-3 600 Scope of subpart**

This subpart prescribes policies and procedures for the purchasing of supplies and nonpersonal services from commercial sources when the aggregate amount involved in any one transaction does not exceed \$2 500. Such purchases shall be termed 'small purchases'. This subpart is not applicable to the procurement of supplies and services initially estimated to exceed \$2 500 even though awards under such procurements do not exceed \$2 500.

§ 1-3 601 Purpose

The objectives of the simplified purchase methods prescribed herein are to reduce the administrative costs in accomplishing small purchases to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts and to eliminate costly and time consuming paper processes.

§ 1-3 602 Policy

(a) Small purchases shall be made by negotiation except under special circumstances where it is clearly in the best interest of the Government to accomplish such purchases by more formal methods.

(b) The objective of helping small concerns to participate in Government contracting has wide potential application where small purchases are concerned and accordingly placement of small purchases with small concerns is specifically encouraged consistent of course with other valid considerations, such as price feasibility.

(c) When quotations are received on a number of related items (such as hardware items, spare parts for vehicles or office supplies etc.) one purchase order shall normally be issued to the firm quoting the lowest aggregate prices rather than issuing more than one purchase order on the basis of accepting the lowest quotation on each item.

(d) In arriving at the aggregate amount involved in any one transaction there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement

were being effected by formal advertising. Requirements aggregating more than \$2 500 shall not be broken down into several purchases which are less than \$2 500 merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under this subpart.

(e) Any one of the purchase methods set forth in this subpart which is determined the most suitable to the immediate requirement and which will accomplish the procurement in the most efficient and economical manner shall be utilized.

§ 1-3 603 Competition**§ 1-3 603-1 Solicitation**

(a) Reasonable competition means obtaining a sufficient number of quotations from qualified sources of supply so as to assure that the procurement is fair to the Government price and other factors considered including the administrative cost of the purchase. In arriving at the number of quotations to be solicited due consideration will be given to the cost of the proposed solicitation in relation to the potential benefits to be derived by the Government consistent with good business.

(b) Reasonable coverage of the market for small purchases does not ordinarily require going outside the trade area in which the procurement office is located to obtain quotations. However competition shall not be limited to suppliers of well-known and widely distributed makes or brands nor shall quotations be solicited purely on a selective personal preference basis. New supply sources disclosed through trade journals or other media shall be continuously reviewed and when appropriate added to the list of available sources.

(c) The following factors influence the number of quotations required in connection with any particular purchase.

(1) The nature of the article or service to be procured and whether highly competitive and readily available in several makes or brands or relatively noncompetitive.

(2) Information obtained in making recent purchases of the same or similar item.

(3) The urgency of the proposed purchase.

(4) The dollar value of the proposed purchase

(5) Past experience concerning specific dealers prices

(d) Solicitation of quotations may be effected orally or in writing. Written solicitation should be used only in such circumstances as where (1) the suppliers are located outside the local area (2) special specifications are involved (3) a large number of items are included in a single proposed procurement or (4) obtaining oral quotations is not considered efficient

(e) Where it is the practice for suppliers to furnish standing price quotations on supplies or services required on an intermittent and recurring basis this information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, the purchaser shall assure that the price information is current and that the Government obtains the benefit of maximum discounts

§ 1-3 603-2 Data to support small purchases

(a) The manner of securing quotations and the nature and extent of information to be required for small purchases are for determination by the procuring agency but should be limited to only that deemed necessary to conclude purchase action

(b) The following are illustrative of the extent to which quotation information should be recorded

(1) *Oral solicitations* When oral price quotations are obtained, informal records should be established which will reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the purchase action request form of the agency or whatever medium the purchaser is using as his basis for making the purchase are satisfactory for this purpose

(2) *Written solicitations* Retention in the purchase files of written quotations received or references to printed price lists used will usually suffice as the record supporting the price paid

(c) Purchase data collected or compiled during the course of arranging the purchase are for administrative and guidance value in making the purchase and issuing the appropriate purchase document. The retention of such data in the purchase files for use in subsequent reference or as administratively required by agencies for management review should be limited in time and quantity to the minimum necessary for such use

§ 1-3 604 Imprest funds (petty cash) method

[24 FR 6843 Aug 22 1959]

§ 1-3 604-1 General

Section 1-3 604 prescribes policies and procedures for making small purchases of supplies and nonpersonal services through the use of imprest funds. Related policies and regulations concerning bonding requirements and the establishment of and accounting for imprest funds are contained in Treasury Department Circular Nos 1030 and 969 and GAO Manual 7 GAO 2700 and 5120

[24 FR 6843 Aug 22 1959]

§ 1-3 604-2 Definition of imprest fund

The term "imprest fund" means a fixed cash or petty cash fund in the form of currency coin or Government check which has been advanced by an official Government disbursing office without charge to a Government appropriation or fund account to a duly authorized cashier for cash payment or other cash requirement purposes as specified in his designation or authorization. The fund may be of a revolving type replenished to a fixed amount as spent or used or of a stationary nature such as a change making fund

[24 FR 6843 Aug 22 1959]

§ 1-3 604-3 Agency responsibilities

Each agency using imprest funds for small cash purchases of supplies or nonpersonal services shall have the responsibility of periodically reviewing and determining whether there is continuing need for each fund established and that amounts of such funds are not in excess of actual needs. Agencies should take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action. In this connection each agency shall

(a) Study agency practices to insure that full advantage is taken of all small purchase processes and

(b) Develop and issue appropriate implementing regulations

[24 FR 6843 Aug 22 1959]

§ 1-3 604-4 Use of imprest funds

(a) The cash payment processes described in this section should be used for making small purchases whenever advantageous to the Government. Cash purchases will generally be advantageous in the following circumstances

(1) When vendors are reluctant to honor small purchase orders

(2) When vendors are not equipped to bill agencies for purchases in accordance with normal business practices

(3) When supplies or nonpersonal services are needed at locations not served by purchase offices or when the established sources of issue are not conveniently accessible to point of use

(4) When provisions for local credit arrangements and monthly billings by vendors are impracticable

(b) The following are typical procurements for which the use of imprest funds would be suitable

(1) Emergency fill-in occasional or special purchases of supplies or services

(2) Repair of equipment

(3) Perishable subsistence

(4) Public utility bills where location of the activity is so situated as to make cash payment more efficient

(5) Postage stamps parcel post COD, postal charges local drayage transportation tokens or passes (including cash fares) and taxi fares

(6) Expenses incident to travel and emergency travel advances (as specified in Treasury Department Circular No 1030)

[24 FR 6843 Aug 22 1959]

§ 1-3 604-5 Limitations

(a) Procurement of supplies or nonpersonal services from one vendor at any one time using simplified imprest fund procedures may not exceed \$50. Exceptions or additions needed in connection with procurement matters described in § 1-3 604-4 as well as the maximum dollar limitation for any one procurement transaction should be addressed to the Treasury Department (pursuant to Treasury Department Cir-

cular No 1030). The granting of any such exceptions or additions will be coordinated with the Administrator of General Services or his designee. Approved exceptions now existing will automatically be continued without specific request from the agency to which exceptions have been granted

(b) Supplies or services subject to restrictions under any provision of law or regulation may not be purchased through use of imprest funds except under conditions which fully comply with such statutory and regulatory restrictions

[24 FR 6843 Aug 22 1959]

§ 1-3 604-6 Procurement and payment

(a) Small purchases utilizing imprest funds may be made only by authorized employees

(b) When payment for small purchases is made from imprest funds no purchase order need be issued unless it is advantageous to the Government for example when required by, the vendor to grant Government discounts. When so required any authorized purchase order form may be used and will be endorsed 'payment to be made in cash'

(c) Receipts must be secured for each payment from imprest funds (pursuant to the provisions of GAO Manual 7 GAO 5120)

(d) The cashier may either reimburse employees for amounts paid by them for authorized purchases or furnish the cash necessary to consummate such purchases. Purchases for which cash has been furnished in advance should be confirmed within five work days from the date of advance

[24 FR 6843 Aug 22 1959]

§ 1-3 604-7 Tax exemption certificates

Since purchases made through the use of imprest funds are of relatively small value Government tax exemption certificates (Standard Form 1094--Revised) generally shall not be used in connection with purchases made under the authority of this section

[24 FR 6843 Aug 22 1959]

§ 1-3 605 Order-Invoice Voucher

§ 1-3 605-1 Standard Form 44

(a) *Prescribed form* Standard Form 44 (Purchase Order-Invoice-Voucher) shall be used by Federal agencies in connection with the procurement of and

payment for purchases of supplies and nonpersonal services whenever

(1) The amount of the purchase is not in excess of \$2 500

(2) A single payment is contemplated,

(3) Its use is determined by the agency to be more efficient or economical in making purchases such as when its use will minimize paper work and administrative expense and act as an incentive to the mutual advantage of business and the Government for sellers to do business with the Government by simplifying purchasing procedure and expediting payment and

(4) No more than the copies provided are essential to administrative distribution needs

(b) *Instructions for use* General procedural instructions governing the use of Standard Form 44 are printed on the forms and the inside cover of the book

(c) *Agency implementation*

(1) Each Federal agency having need for this type purchase order form should issue instructions providing for

(i) Use of Standard Form 44 for small purchases made under the criteria set forth in section 1-3 605-1(a)

(ii) Accountability and safeguarding of the forms

(iii) Controlling and accounting for purchases made

(2) Agency instructions shall be consistent with the provisions on Standard Form 44 and of this section Agency procurement and accounting procedures should provide insofar as practicable for unrestricted use of the form under the criteria provided

(d) *Availability of form*

(1) Standard Form 44 is available from General Services Administration stores in books of twenty-five carbon interleaved sets These books may be ordered in the same manner as other standard forms

(2) Standard Form 44 may be ordered overprinted with agency name address and serial number and with special weight paper length of carbons type of construction and number of sets per book as specified by the ordering agency The format of the form the number of copies per set and the color of the paper will not be changed The

instructions which appear on the inside front cover may be altered to suit the ordering agency's specific requirements

§ 1-3 605-2 Standard Forms 147 and 148

(a) *Prescribed forms*

(1) Standard Form 147 (Order-Invoice-Voucher) and Standard Form 148 (Order-Invoice-Voucher Continuation Sheet) provide in one set of forms a purchase or delivery order vendor's invoice receiving report and public voucher with requisite space for purchase data vendor's invoicing and allied budget accounting and voucher payment data These forms are designated primarily for use when single delivery, single payment transactions are contemplated at the time of issuance and are for use by all Federal agencies when in the judgment of the agency the use of a combined order-invoice receiving report and voucher will simplify the procurement process

(2) Primary uses of Standard Form 147 are

(i) As a purchase order for small purchases

(ii) As a delivery order for ordering or scheduling delivery against an established contract

(3) The use of Standard Form 147 as a delivery order against a blanket purchase order is in keeping with its intended use

(b) *Expanded use of the form*

(1) The use of Standard Form 147 may be expanded to include purchase actions other than those generally contemplated for this type of form if it is determined by an agency as the result of a study of its procurement operations that such expanded use would result in standardization or simplification of procedures or of minimizing paper work and administrative expense Such expanded use may be authorized by the head of the agency

(2) The use of additional parts creating more than six-part (or in some cases seven-part) sets must be authorized in writing by the head of the department or independent agency and be based on a complete study of operations which fully justifies the necessity for each additional part These findings and determinations must be on file in the agency and available to representatives

of the General Services Administration and the General Accounting Office

(c) *Availability of form*

(1) Standard Form 147 is available in six-part sets from General Services Administration regional offices for the convenience of agencies not requiring overprinting and may be ordered in the same manner as other standard forms

(2) Standard Forms 147 and 148 may be ordered overprinted with agency name address and serial number and with special weight paper length of carbons or other items as specified by the ordering agency. The format of the form, the color of the paper and the number of copies (except when authorized pursuant to section 1-3 605-2 (b) (2)) shall not be changed

(d) *Special instructions*

(1) Each agency is expected to develop and issue internal administrative instructions regarding the use of the forms consistent with the provisions of this section

(2) The use of the forms contemplates that the vendor will utilize copy 1 (original) as his invoice in billing the Government. However in furtherance of the policy of encouraging vendors to make consolidated periodic billings in instances where several orders have been placed with the same dealer in the same billing period, agencies are requested to instruct vendors to make consolidated periodic billings on their own invoices or statement forms supported by originals of the Standard Forms

(3) When procurement documented on the forms is paid for in cash, copy 1 of Standard Form 147 should be marked paid and signed and dated by the vendor or agent on the face thereof in the usual commercial manner. The vendor's certificate need not be signed when the form is receipted for cash payment. Cash register receipts or other commercial receipts may be attached in lieu of signature by the vendor

(e) *Terms and conditions*

(1) Additional terms and conditions not inconsistent with those on the form may be added in the space provided or otherwise

(2) Additional terms and conditions inconsistent with those on the form may not be used unless authorized by the head of the using agency or the officer designated by him for this purpose. A copy

of each such approval for use of inconsistent terms and conditions shall be forwarded to the Administrator of General Services

§ 1-3 606 Blanket purchase arrangements

§ 1-3 606-1 General

This section establishes policy relating to the purchase of day-to-day requirements through arrangements with vendors or dealers to furnish such supplies or nonpersonal services as the Government may purchase from such sources during a stated period of time. Generally these arrangements should be made only with local sources so that individual purchases thereunder can be effected with a minimum of time and paper work. In addition to making blanket purchase arrangements for small purchases, similar blanket purchase accounts may be established with Federal Supply Schedule contractors if not inconsistent or at variance with the terms of the applicable Federal Supply Schedule Contract

§ 1-3 606-2 Authority to use blanket purchase arrangements

(a) Blanket purchase arrangements are authorized when

(1) A wide variety of items in a broad class of goods like hardware are generally purchased from local suppliers but the exact items, quantities and delivery requirements are not known in advance and may vary considerably

(2) There is a need to provide local commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise

(3) In any other case where the writing of numerous purchase orders can be avoided through the use of this procedure

(b) Blanket purchase arrangements should be made with local firms from whom numerous individual purchases will likely be made in a given period. For example, where past experience has shown that certain commercial firms selling supplies in a local area are dependable and consistently lower in price than other supply firms in the area dealing in the same commodities and numerous small purchases are usually made from such suppliers, it would be advantageous to establish blanket purchase arrangements with these firms

(c) There is no prohibition against making these arrangements with several suppliers for the same class or classes of items. Where experience indicates that prices vary between suppliers it is preferable to have several blanket purchase arrangements so that delivery orders can be placed with the firm offering the best price.

§ 1-3 606-3 Establishment of account

If it is determined that blanket purchase arrangements with certain suppliers would be advantageous such suppliers should be contacted preferably in person or through correspondence in order to make the necessary arrangements with respect to securing maximum discounts, documenting the individual purchase transactions, periodic billing and other necessary details.

§ 1-3 606-4 Documentation

(a) Any documentation is permissible that assures the following:

(1) That the vendor and purchaser are in agreement as to what is being purchased.

(2) That at the time of delivery a record of sale and receipt is created.

(3) That at the time of billing for payment the foregoing requirements have provided evidence of the items, quantity, price, date sold and other relevant data.

(b) The issuance of a formal purchase order to document blanket purchase arrangements may be necessary only in certain instances. Such instances may be when required by the vendor for administrative or tax exemption purposes, when administratively deemed necessary in the best interests of the Government by an agency or when it is necessary to fix the extent of items covered, quantity, prices, expenditure, authorized activities, participating or otherwise identify or isolate areas of the arrangement. The issuance of a purchase order for Government purchasing or accounting reasons alone is not necessary.

(1) Purchase orders establishing blanket purchase arrangements when required may be general and broad in language with only sufficient detail to indicate the general nature of supplies or services to be covered and may or may not as the need dictates be specific as to quantity, quality, specifications or

time limitation. The blanket purchase orders may be issued on any authorized purchase order form. Individual blanket purchase orders terminate when the purchases thereunder total the dollar amount limitation or the stated time period expires.

(2) In any contemplated amendment of a blanket purchase order due consideration should be given to possible changes in market conditions, sources of supply, etc., which may warrant placing a new order with the same or a different source in preference to amendment.

§ 1-3 606-5 Agency implementation

The following general instructions are set forth for agency use in the issuance of administrative regulations implementing this policy:

(a) The vendor-agency relationship is that of an open account limited only by the maximum amount and time period limitations fixed by that agency.

(b) The vendor-agency arrangement may be limited to furnishing individual items or commodity groups or classes or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(c) The requirements of one or more activities, offices or projects in a geographical area may be secured by this means.

(d) Authority and responsibility for effecting blanket purchase arrangements should be delegated by agencies to the lowest agency level to which the responsibility of providing supplies for its own operations or to other offices, installations, projects or functions is placed or assigned. Such levels may be organized, supply points, separate independent or detached field parties or one-man posts or activities.

(e) The use of blanket purchase arrangements does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be accomplished by the use of simplified methods avoiding detailed fiscal recordation for individual deliveries and similar transactions under arrangements referred to above.

(f) The use of a blanket purchase arrangement does not authorize purchases not otherwise authorized by laws or regulations applicable, e.g., the blanket purchase arrangement being a

method of simplifying the making of individual small purchases may not be used to avoid the \$2 500 limitation

(g) The blanket purchase arrangement and individual purchases thereunder are primarily designed to reduce the amount of documentation in connection with small purchases. The same policies as to selection of suppliers on the basis of price, time discounts, quality of merchandise and responsibility of suppliers pertain to blanket purchase arrangements and purchases thereunder as to purchases made by other approved methods. Individual purchases should be made only after making price comparisons with other sources available to the extent practicable consistent with the purchase involved.

(h) Constant consideration should be given to possible changes in market conditions, sources of supply and other pertinent factors which may warrant making new arrangements with different dealers or vendors or modifying existing arrangements.

§ 1-3 607 Interagency use of local term contracts

(a) *General* This section provides for the cooperative use by the field office of one executive agency of the local term contracts of another agency or another office of the same agency under the circumstances outlined and establishes criteria for local contracting by an agency for the combined needs of several agency offices in the area. These contracts provide a means of meeting the local requirements of supplies and services not available from normal agency internal supply channels or other prescribed sources of supply. All Federal agencies are urged to participate in this program.

(b) *General conditions warranting use* The use of term contracts usually will be found expedient and economical under any or all of the following conditions:

(1) When the day-to-day requirements for the supply or service are continuing or recurring.

(2) When the probable total requirements only are known and it is expedient and economical to have a source of supply and price determined in advance of the individual instances of actual need.

(3) When this method best meets the needs for providing ordering offices with ready sources of supply.

(c) *Use of existing contracts* To the extent practicable when approved by the contracting office and the contract permits or may be amended to permit the use of an existing local term contract of another office of the same agency or of another agency in lieu of entering into a separate contract, such use should be considered under any of the following circumstances:

(1) When such use will obviate the administrative expense and time delay incident to making a separate contract.

(2) When there is a price advantage to be gained, freight and other costs considered.

(3) When the requiring office has local purchasing authority but is not staffed or authorized to execute contracts.

(d) *Multiple use contracts* In furtherance of the economical and other advantages to be gained from cross utilization of local term contracts wherever possible the requirements of several offices in the same community should be combined and included in a single contract.

(1) When there is a local repetitive need for a particular article or service by the individual agencies.

(2) When an advantage accrues to requiring offices or activities through establishment of such contracts and.

(3) When it is expedient and practical for a single office to perform the contracting function for other offices, delivery or performance under the contract being arranged for by the participating offices as required.

(e) *Selection of contracting agency* The following criteria usually will determine which of the agency offices in any given area having a common need for a given article or service should assume the responsibility for contracting for the requirements of the group in addition to its own needs:

(1) Current or potential preponderant use of consumption.

(2) Actual or potential qualifications and experience of contracting personnel with due regard to adequacy of staff.

(3) Physical location of the contracting office in relation to market area serving the agencies

(4) Consideration of the bid prices consistently received for a given article or service by individual contracting offices

(f) *Responsibilities of contracting office and participating offices* The responsibilities of the contracting agency and of the other participating offices with respect to common local term contracts except where other arrangements have been made normally will be

(1) *Contracting office*

(i) Arranging with participating offices for submission of estimated requirements

(ii) Soliciting and analyzing bids and awarding and executing contracts

(iii) Exercising general contract administration except followup and expediting

(iv) Making available to the participating office such contract data as is required for placing orders, payment of invoices etc

(2) *Other participating offices*

(i) Placing of orders directly with contractor

(ii) Arranging for inspection and acceptance

(iii) Arranging for billing and paying the contractor

Subpart 1-3 7—[Reserved]**Subpart 1-3 8—Price Negotiation Policies and Techniques****§ 1-3 800 Scope of subpart**

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to approval or review within an agency. The principles in this subpart apply to negotiation of prices on all types of contracts and to revised prices as well as initial prices.

§ 1-3 801 Basic policy

(a) *General* It is the policy of the Government to procure property and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

(b) *Responsibility of contracting officers*

(1) Contracting officers acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of their respective agencies to enter into and administer contracts on behalf of the Government in accordance with agency procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all of the organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, engineering, traffic management, and cost analysis) necessary to accomplish the purpose as in his discretion will best serve the interests of the Government.

(2) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts requesting advice from them, evaluating their counsel, and availing himself of their skills as much as possible. The contracting officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus the final negotiation

of price including evaluation of cost estimates remains the responsibility of the contracting officer.

(c) *Responsibility of other personnel* Personnel other than the contracting officer who determine quality, quantity, and delivery requirements for items to be purchased can influence the degree of competition obtainable as well as have a material effect upon the prices. Failure to finalize requirements in sufficient time to allow

(1) A reasonable period for preparation of requests for proposals.

(2) Preparation of quotations by offerors.

(3) Contract negotiation and preparation, and

(4) Adequate manufacturing lead time.

causes delinquency in delivery and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specifications, adequacy of sources of supply, and like matters have responsibility in such areas equal to that of the contracting officer for timely sound and economical procurement.

§ 1-3 802 Preparation for negotiation

(a) *Product or service* Knowledge of the product or service and its use is essential to sound pricing. Before soliciting quotations, every contracting officer should develop where feasible an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition and should prior to award inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(b) *Selection of prospective sources* Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be invited from a sufficient number of competent potential sources to insure adequate competition.

(c) *Requests for proposals* Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a quotation properly. The request for proposals shall be as complete as possible with respect to item description or statement of work specifications. Government-furnished property if any required delivery schedule and contract clauses. If a price breakdown is required the request for proposals shall so state. Requests for proposals shall specify a date for submission of proposals; any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be released to all prospective offerors at the same time and no offeror shall be given the advantage of advance knowledge that proposals are to be requested. Generally requests for proposals shall be in writing. However in appropriate cases, such as the procurement of perishable subsistence, oral requests for quotations are authorized.

§ 1-3 803 Type of contract

(a) The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. Section 1-3 402 lists some of the factors for this joint consideration. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed price contract there should be compatibility between the type of contract selected and the contractor's accounting system.

(b) In the course of a procurement program a series of contracts or a single contract running for a lengthy term the circumstances which make for a selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular the repetitive or unduly protracted use of cost-reimbursement type or time and materials contracts is to be avoided

where experience has provided a basis for firmer pricing which will promote efficient performance and will place a more reasonable degree of risk on the contractor. Thus in the case of a time and materials contract continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

§ 1-3 804 Conduct of negotiations

Evaluation of offerors' or contractors proposals including price revision proposals by all personnel concerned with the procurement as well as subsequent negotiations with the offeror or contractor shall be completed expeditiously. Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid. Basic questions should not be left for later agreement during price revision or other supplemental proceedings. Cost and profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

§ 1-3 805 Selection of offerors for negotiation and award

(a) The normal procedure in negotiated procurements after receipt of initial proposals is to conduct such written or oral discussions as may be required to obtain agreements most advantageous to the Government. Negotiations shall be conducted as follows:

(1) Where a responsible offeror submits a responsive proposal which in the contracting officer's opinion, is clearly and substantially more advantageous to the Government than any other proposal, negotiations may be conducted with that offeror only or

(2) Where several responsible offerors submit offers which are grouped so that a moderate change in either the price or the technical proposal would make any one of the group the most advantageous offer to the Government further negotiations should be conducted with all offerors in that group.

Whenever negotiations are conducted with more than one offeror no indication shall be made to any offeror of a price which must be met to obtain further consideration since such practice constitutes an auction technique which must be

avoided. No information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Whenever negotiations are being conducted with several offerors while such negotiations may be conducted successively all offerors participating in such negotiations shall be offered an equitable opportunity to submit such pricing technical or other revisions in their proposals as may result from the negotiations. All offerors shall be informed that after the submission of final revisions, no information will be furnished to any offeror until award has been made.

(b) There are certain circumstances where formal advertising is not possible and negotiation is necessary. In the conduct of such negotiations where a substantial number of clearly competitive proposals has been obtained and where the contracting officer is satisfied that the most favorable proposal is fair and reasonably priced award may be made on the basis of the initial proposals without oral or written discussion provided that the request for proposals notifies all offerors of the possibility that award may be made without discussion of proposals received and hence that proposals should be submitted initially on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposal the contracting officer shall not make an award without further exploration and discussion prior to award. Also when the proposal most advantageous to the Government involves a material departure from the stated requirements consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal provided that this can be done without revealing to the other firms any information which is entitled to protection.

(c) A request for proposals may provide that after receipt of initial technical proposals such proposals will be evaluated to determine those which are acceptable to the Government or which after discussion can be made acceptable

and upon submission of prices thereafter award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(d) The procedures set forth in paragraphs (a) (b) and (c) of this section 1-3 805 may not be applicable in appropriate cases when procuring research and development or special services (such as architect-engineer services) or when cost-reimbursement type contracting is anticipated.

(e) Whenever in the course of negotiation a substantial change is made in the Government's requirements for example increases or decreases in quantities or material changes in the delivery schedules all offerors shall be given an equitable opportunity to submit revised proposals under the revised requirements.

§ 1-3 806 Pricing individual contracts

(a) Each contract shall be priced separately and independently and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition shall not be construed to prohibit forward pricing agreements applicable to several contracts.

(b) Contracting officers shall not rely on profit limiting statutes as remedies for ineffective pricing. Such statutes generally provide for the recapture of excessive profits but they do not recapture the costs of inefficiency and waste which may result from failure to negotiate reasonable prices initially.

§ 1-3 807 Cost, profit, and price relationships

(a) When products are sold in the open market costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly where competition may be ineffective or lacking estimated costs plus estimated profit are not the only pricing criteria. In some cases the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fixed fee as in research and development projects where the contractor is willing to share part of the costs. In other cases price may be controlled by competition as set forth in section 1-3 805(a). The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors.

(b) Profit is only one element of the price proposal and normally represents a smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profits that the most important consideration the total price itself is distorted or diminished in its significance. Government procurement is primarily concerned with the reasonableness of a negotiated price and only secondarily with the eventual cost and profit.

(c) Particularly where effective competition is lacking the estimate for profit or the proposed fixed fee should be analyzed in the same manner as all other elements of price applying tests and considerations discussed in section 1-3 808-4. A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. If for example a factor of 10% were used as a flat percentage rate for estimating profit in a situation where two sources were needed to meet the requirement the result might be grossly inequitable. If one supplier proposes to and produces at a unit cost of \$1 000 and the second at a unit cost of \$1 500 with a flat 10% factor applied to both transactions as estimated profit the second and higher cost supplier would receive \$150 profit while the lower cost supplier would receive only \$100.

§ 1-3 808 Pricing techniques

§ 1-3 808-1 General

Policies set forth in this section 1-3 808 may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. The extent to which any particular method or combination of methods should be used will depend upon the judgment of the contracting officer. The following sections describe several of the principal price negotiation techniques and the circumstances under which each may be used. These considerations are equally applicable to initial and subsequent price negotiations.

§ 1-3 808-2 Price analysis

(a) Some form of price analysis should be made in every procurement,

even when competitive proposals have been submitted. The presence of effective competition however may make it possible to limit considerably the degree of price analysis required.

(b) One form of price analysis is the comparison of prior quotations and contract prices with current quotations for the same or similar end items. To provide a suitable basis for comparison appropriate allowances may have to be made for differences in such factors as specifications, quantities, ordered time for delivery, Government-furnished materials and the general level of business and prices.

(c) Rough yardsticks may often be developed (in such terms as dollars per pound per horsepower or other units) to point up apparent gross inconsistencies which should be subjected to additional pricing techniques including cost analysis. Such yardsticks should be considered as an indispensable adjunct to cost analysis since a study of a single offeror's estimated costs in sole source situations will not indicate whether the proposed price is fair and reasonable in comparison with other products of the same kind.

§ 1-3 808-3 Cost analysis

(a) The need for cost analysis depends on the effectiveness of the methods of price analysis, the amount of the proposed contract and the cost and time needed to accumulate the information necessary for analysis. When cost analysis is undertaken, the contracting officer must exercise judgment in determining the extent of the analysis. Cost analysis is desirable whenever

(1) Effective competition has not been obtained.

(2) A valid basis for price comparison has not been established because of the lack of definite specifications, the novelty of the product or for other reasons.

(3) Price comparisons have revealed apparent inconsistencies which cannot be satisfactorily explained or otherwise reasonably accounted for.

(4) The prices quoted appear to be excessive on the basis of information available.

(5) The proposed contract is of a significant amount and is to be awarded to a sole source.

(6) The proposed contract will probably represent a substantial percentage of the contractor's total volume of business, or

(7) A cost-reimbursement incentive, price redeterminable or time and material contract is negotiated

(b) Cost analysis involves the evaluation of specific elements of cost and the effect on prices of such factors as

(1) Allowances for contingencies

(2) The necessity for certain costs

(3) The reasonableness of amounts estimated for the necessary costs

(4) The basis for allocation of overhead costs and

(5) The appropriateness of allocations of particular overhead costs to the proposed contract

(c) Among the several types of cost comparisons that should be made where the necessary data are available are comparisons of a contractor's or offeror's current estimated costs with

(1) Actual costs previously incurred by the contractor or offeror and with its last prior estimate for the same or similar item or with a series of prior estimates,

(2) Current estimates from other possible sources and

(3) Prior estimates or historical costs of other contractors manufacturing the same or related items

(d) Forecasting future trends in costs from historical cost experience is of primary importance in pricing. In periods of either rising or declining costs an adequate cost analysis must include some evaluation of the trends. Even in periods of relative price stability trend analysis of basic labor and materials costs should be undertaken in cases involving production of recently developed complex equipment. In some cases probable increases in labor efficiency and reductions in material spoilage as a contractor's work force gains in experience with such new products can be predicted statistically. Efficiency curves may be devised to predict the reduction in the spoilage rate. Learning curves may be devised to evaluate reductions in labor hours. Effective use of learning curves depends on the presence of the following elements

(1) Direct labor should represent a substantial element of the total price

(2) The contract price should be large enough to warrant the time spent in collecting the statistical data necessary to construct valid curves

(3) The proposed contract should cover production over a relatively long period,

(4) A substantial body of historical labor cost data must be available and

(5) The product must be a complex non-standard item requiring a substantial amount of assembly labor (where relatively large amounts of automatic machinery are to be employed or the product is a relatively standard item learning curves may be of little value)

§ 1-3 808-4 Profit

(a) *General* Where competition is adequate and effective and proposals are on a firm fixed-price basis the contracting officer normally need not consider in detail the amount of estimated profit included in a price. However when detailed analysis of profit is appropriate due to lack of competition or for some other reason the factors discussed in the following paragraphs should be considered

(b) *Degree of risk* The degree of risk assumed by the contractor should influence the amount of profit a contractor is entitled to anticipate. For example where a portion of the risk has been shifted to the Government through unusual contingency provisions or other risk-reducing measures the amount of profit to which the contractor is reasonably entitled is less than where the contractor assumes all risk

(c) *Extent of Government assistance* The Government encourages its contractors to perform their contracts with the minimum of financial facility or other assistance from the Government. Where extraordinary financial facility, or other assistance must be furnished to a contractor by the Government such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit

(d) *Performance record of contractor* The contractor's past and present performance and cooperation in such areas as engineering (including inventive design simplification and developmental contributions) and quality control should in appropriate measure, affect the amount of profit

(e) *Character of contractor's business* Recognition must be given to the type of business normally carried on by the contractor the complexity of manufacturing techniques the rate of capital turnover and the effect of such individual procurement upon such business For example where a contractor is engaged in an industry where the turnover of working capital is low generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid

(f) *Contractor's performance* In addition to the factors set forth in section 1-3 102 the contractor's performance should be evaluated in such areas as quality of product quality control scrap and spoilage efficiency in cost control (including need for and reasonableness of costs incurred) meeting delivery schedule timely compliance with contractual provisions creative ability in product development (giving consideration to commercial potential of product) management of subcontract programs and any unusual services furnished by the contractor To encourage and maintain a high degree of contractor efficiency and economy the negotiator must recognize that good performance deserves a greater opportunity for profit than poor performance

§ 1-3 808-5 Subcontracting

(a) The amount and quality of subcontracting may be a major factor influencing price Since a large portion of the procurement dollar is spent by prime contractors in subcontracting for work raw materials parts and components efficient purchasing practices by a contractor will contribute heavily toward efficient and economical production

(b) While basic responsibility rests with the prime contractor for decisions to make or buy for selection of subcontractors and for subcontract prices and subcontract performance the contracting officer must have adequate knowledge of those elements and their effects on prime contract prices Consequently during price negotiations when circumstances warrant such action the contracting officer may require the offeror or contractor to furnish adequate information for use in evaluating the proposed price with respect to

(1) The purchasing practices of the prime contractor,

(2) The principal components to be subcontracted and the contemplated subcontractors including the degree of competition obtained cost or price analyses or price comparisons accomplished and the extent of subcontract supervision

(3) The types of subcontracts i.e. firm fixed-price or other and

(4) The estimated total extent of subcontracting including procurement of purchased parts and materials

The evaluation of total subcontracting should not be reduced to applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price Such elements as economies achieved through make or buy decisions and the necessity of closer supervision of subcontractors performing complex work (through the furnishing of engineering or other technical assistance) should be fully considered

(c) When the prime contract is to be placed on a firm fixed-price basis there is no need for pricing purposes to provide for review or approval by the contracting officer of subcontracts prior to their placement

(d) When the prime contract is not to be placed on a firm fixed-price basis review of subcontracts prior to placement may be desirable since the ultimate cost to the Government will depend in part on subcontract prices and performance Prime contract provisions requiring advance notification review, or approval of subcontracts shall be consistent with the type of contract and the conditions applicable to its use as described in Subpart 1-3 4 For example if the contract is on a firm fixed-price basis except for a clause permitting price escalation resulting from cost increases for certain materials the prime contract may limit the contracting officer's right of review to subcontracts for materials covered by the escalation clause In the case of cost-reimbursement type contracts advance notification prior consent or approval of subcontracts should be required Contract provisions requiring advance notification to the contracting officer of proposed subcontracts for materials components and other purchases may be appropriate both for information as to sources and prices and to provide an opportunity for review and

for approval or objection by the contracting officer prior to award of the subcontracts. Such provisions are particularly necessary when

(1) The prime contractor's purchasing policy and system or performance thereunder are considered inadequate

(2) Subcontracts are for items for which there is no cost information or for which the proposed prices appear unreasonable and the amounts involved are substantial,

(3) Close working arrangements or other business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than would otherwise be obtained

(4) A subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government all other factors such as manufacturing period and quantity being comparable or

(5) A subcontract is to be placed on a fixed-price incentive time and material or cost-reimbursement basis

The contract provisions relating to subcontracts should be consistent with the amount and character of subcontract work and with the overall character of the prime contract involving the Government to the minimum extent practicable in the contractor's exercise of management responsibility but giving reasonable assurance that the Government is receiving the greatest practical return for its expenditure. Provisions in prime fixed-price contracts relating to subcontract review may as appropriate be confined to one major subcontract or to certain classes of subcontracts may set a floor above which advance approval of proposed subcontracts may be required before placement or may be tailored to cover unusual or particular circumstances. In those instances where a contractor's purchasing system has been deemed adequate review of subcontracts generally may not be necessary. However contracting officers shall conduct periodic reviews of the application of the system to insure conformance therewith. In instances where subcontracts have been placed on a cost-reimbursement or time and materials basis contracting officers should be

skeptical of approving the repetitive or unduly protracted use of such types of subcontracts and should follow the principles of section 1-3 803(b)

(e) In cases where the prime contract reserves a right for the contracting officer to review or approve subcontracts the prime contract shall also reserve to the Government the right to inspect and audit the books and records of such subcontractors. Whenever such first tier subcontracts are of the cost-reimbursement fixed-price incentive or time and material type a similar right shall be reserved to the Government to inspect and audit the books and records of lower tier subcontractors. *Provided* That such a right shall not be reserved contractually below the point where a firm fixed-price subcontract intervenes

(f) Where subcontracts are placed on a fixed-price incentive basis it is particularly important in negotiating revisions of prime contract prices that there be substantial assurance that there was initial close pricing of subcontracts

§ 1-3 808-6 Sole source items

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally consummated with the contractor the contractor's price lists and discount or rebate arrangements should be examined and negotiations conducted on the basis of the 'best user' most favored customer or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period such as a fiscal year rather than the size of the individual procurement being negotiated

§ 1-3 809 Audit as a pricing aid

(a) *General* The audit services of the agencies should be utilized as a pricing aid by the contracting officer to the fullest extent appropriate when the dollar amount involved is sufficiently large, or special circumstances exist which warrant the time and expense required for the particular type of advisory audit special survey or audit analysis of price or cost desired. Judicious use of audit services will expedite proper pricing

The determination as to the necessity of an audit report for pricing purposes is the responsibility of the contracting officer. When requesting audit services the contracting officer shall state the purpose for which the report is to be used and define any specific areas of audit examination which should be given special attention.

(b) *Application* Except for contracts containing retroactive price revision clauses pricing techniques are concerned mainly with estimates of future costs. Therefore audit reports for either retroactive or prospective pricing should not only establish costs accrued to a specific cut-off point for price proposal purposes but also should include cost trends and other available information which would be of assistance to the contracting officer in price negotiation. Such audit reports will serve a useful purpose in:

(1) The evaluation of contingency allowances overhead allocations purchasing management efficiency, and similar cost elements,

(2) Both the initial and subsequent pricing of contracts containing price revision clauses and

(3) Establishing limitations on costs and price revision adjustments.

(c) *Conditions for use* Close coordination between the audit agency and procurement personnel will assist in determining the necessity of audit of price or cost proposals or the necessity of special surveys relating to contractor's accounting or purchasing systems. Some of the conditions under which the contracting officer should consider the use of audit services include:

(1) Inadequate knowledge concerning the contractor's accounting policies cost systems or substantially changed methods or levels of operation.

(2) Previous unfavorable experience indicating doubtful reliability of the contractor's estimating accounting or purchasing methods.

(3) Procurement of a new product for which cost experience is lacking.

(4) Contract performance requiring a substantial period of time.